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Paper No. 19

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Mason, OH 45040

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**SEP 04 2002**

In re Application of  
Lightcap et al.  
Application No. 09/128,753  
Filed: August 4, 1998  
Attorney Docket No. DVL-003PAT

**OFFICE OF PETITIONS**  
  
**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(a), filed July 16, 2002, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 21, 2001, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 22, 2001. A Notice of Abandonment was mailed on May 8, 2002.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed. In order to overcome this presumption, a petition alleging non-receipt of an Office action must:

- (1) include a statement from practitioner stating that the Office action was not received,
  - (2) attest that a search of the file jacket has been made,
  - (3) attest that a search of all relevant docket records has been made,
  - (4) include a copy of the docket record where the Office action would have been entered had it been received, and
  - (5) include any additional information which may be required by the Commissioner.
- See MPEP 711.03(c)(II).

As to (3) and (4), petitioner has failed to state that a search of docket records has been performed and petitioner has failed to supply copies of any docket records or mail logs kept by petitioner.

Petitioner should note that the address of record is:  
MARK F SMITH,  
SMITH BRANDENBURG FREESE & KNOCHELMANN  
SUITE 229  
10921 REED HARTMAN HIGHWAY  
CINCINNATI OH 45242

Petitioner must demonstrate that the Notice was never received at the address of record. If the Notice was not received because petitioner changed addresses without notifying the Office, then relief under 37 CFR 1.137(a) will not be granted and petitioner should file a petition under 37 CFR 1.137(b).

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By facsimile: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
Arlington, VA 22202

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy